

FIFTY-SEVENTH DAY
(Wednesday, April 22, 1981)

The Senate met at 10:30 o'clock a.m., pursuant to adjournment and was called to order by the President.

The roll was called and the following Senators were present: Blake, Brooks, Brown, Caperton, Doggett, Farabee, Glasgow, Harris, Howard, Jones, Kothmann, Leedom, Mauzy, Mengden, Ogg, Parker, Santiesteban, Sarpalius, Short, Snelson, Traeger, Travis, Truan, Uribe, Vale, Williams, Wilson.

Absent-excused: Andujar, McKnight, Meier, Richards.

A quorum was announced present.

Father Leopoldo Reyes, St. Julia Catholic Church, Austin, offered the invocation as follows:

O God, the source of all wisdom, whose statutes are good and gracious, and whose law is truth, guide and direct our State Legislators that by just and prudent laws, they may promote the well-being of all the people of this great State of Texas. Fill them with Your wisdom, Lord, that they may seek to do what is just and right following Christian ideals.

O God, we ask Your divine protection on our President, grant him godspeed and complete recovery. And protect our governor, senators, congressmen and women, our city officials and all others in authority from any kind of harm.

May this Legislative Session be blessed with many good things. We ask all these things in Your most holy name. Amen.

On motion of Senator Brooks and by unanimous consent, the reading of the Journal of the proceedings of yesterday was dispensed with and the Journal was approved.

LEAVES OF ABSENCE

Senator Meier was granted leave of absence for today on account of important business on motion of Senator Snelson.

Senator Andujar was granted leave of absence for today on account of important business on motion of Senator Harris.

Senator Richards was granted leave of absence for today on account of important business on motion of Senator Jones.

Senator McKnight was granted leave of absence for today on account of important business on motion of Senator Doggett.

MESSAGE FROM THE HOUSE

House Chamber
April 22, 1981

HONORABLE W. P. HOBBY
PRESIDENT OF THE SENATE

Sir: I am directed by the House to inform the Senate that the House has passed the following:

S.C.R. 94, Commending Abilene Christian University on the occasion of the 75th anniversary of its founding.

H.C.R. 155, Congratulating Representative Chris Semos for being named Oak Cliff Man of the Year.

H.B. 34, Relating to the membership of the State Depository Board.

H.B. 35, Relating to the membership of the State Banking Board.

H.B. 1269, Relating to pilot programs on teacher evaluation.

H.B. 1899, Relating to the regulation of natural and synthetic gas.

H.B. 2318, Appropriating funds for the salaries of three district attorneys.

S.B. 126, Relating to the penalties for certain offenses committed against children. (With amendment)

Respectfully,

BETTY MURRAY, Chief Clerk
House of Representatives

CO-AUTHOR OF SENATE BILL 276

On motion of Senator Wilson and by unanimous consent, Senator Harris will be shown as Co-author of **S.B. 276**.

REPORTS OF STANDING COMMITTEES

Senator Traeger submitted the following report for the Committee on Intergovernmental Relations:

S.B. 1007
S.B. 1067 (Amended)
S.B. 1064
S.B. 877
S.B. 1161 (Amended)
H.B. 286
H.B. 1409
H.B. 939
S.B. 1194 (Amended)
C.S.S.B. 1098 (Read first time)

Senator Brooks submitted the following report for the Committee on Human Resources:

S.B. 905
C.S.S.B. 256 (Read first time)
C.S.S.B. 257 (Read first time)

Senator Truan, Acting Chairman, submitted the following report for the Committee on Human Resources:

C.S.S.B. 215 (Read first time)

Senator Snelson submitted the following report for the Committee on Education:

S.B. 957

Senator Mauzy submitted the following report for the Committee on Jurisprudence:

S.B. 421 (Amended)

S.B. 519

Senator McKnight submitted the following report for the Subcommittee on Nominations:

We, your Subcommittee on Nominations, to which were referred the following appointments, have had same under consideration, and beg to report them back to the Senate for final consideration.

To be a Member of the STATE SECURITIES BOARD: Hal M. Bateman, Lubbock County.

To be a Member of the TEXAS COLLEGE AND UNIVERSITY SYSTEM COORDINATING BOARD: Cipriano F. Guerra, Jr., Bexar County.

To be Members of the BOARD OF REGENTS - PAN AMERICAN UNIVERSITY: Ricardo H. Hinojosa, Hidalgo County; Dr. Rodolfo E. Margo, Hidalgo County.

To be Members of the BOARD OF DIRECTORS - RED RIVER AUTHORITY: Robert L. Bliss, Swisher County; J. W. Campbell, Gray County; Albert B. Wharton III, Wilbarger County.

To be JUDGE OF THE 268TH JUDICIAL DISTRICT COURT, FORT BEND COUNTY: A. Reagan Clark, Fort Bend County.

To be JUDGE OF THE 144TH JUDICIAL DISTRICT: Roy R. Barrera, Jr., Bexar County.

To be a Member of the BOARD OF REGENTS - TEXAS WOMAN'S UNIVERSITY: Mrs. Margaret Estes Davis, Gregg County.

To be a Member of the COMMISSION ON JAIL STANDARDS: Dr. Hanes Hanby Brindley, Bell County.

To be PRESIDING JUDGE OF THE FIFTH ADMINISTRATIVE JUDICIAL DISTRICT: Jose R. Alamia, Hidalgo County.

To be Members of the RIO GRANDE VALLEY MUNICIPAL WATER AUTHORITY: John Buffo, Willacy County; Juan Garcia, Willacy County; Carroll Duncan Stone, Cameron County; Joe J. Garza, Cameron County;

William F. Powell, Jr., Hidalgo County; William W. Scurlock, Hidalgo County;
Paul G. Veale, Sr., Hidalgo County.

SENATE BILLS ON FIRST READING

On motion of Senator Doggett and by unanimous consent, the following bills were introduced, read first time and referred to the Committee indicated:

S.B. 1227 by Traeger, Vale, Intergovernmental Relations
Kothmann
Relating to the creation of four judicial districts composed of Bexar County.

S.B. 1228 by Doggett State Affairs
Relating to notice of proposed utility rate changes.

S.B. 1229 by Ogg State Affairs
Relating to the importation of wine for personal use; amending Subsection (a),
Section 107.07, Alcoholic Beverage Code.

HOUSE BILLS AND RESOLUTIONS ON FIRST READING

The following bills and resolutions received from the House were read the first time and referred to the Committee indicated:

H.B. 1192, To Committee on State Affairs.
H.B. 1154, To Committee on Natural Resources.
H.B. 769, To Committee on Economic Development.
H.B. 22, To Committee on Jurisprudence.
H.B. 201, To Committee on Education.
H.B. 269, To Committee on Education.
H.B. 275, To Committee on Natural Resources.
H.B. 278, To Committee on Education.
H.B. 454, To Committee on Education.
H.B. 471, To Committee on Natural Resources.
H.B. 509, To Committee on State Affairs.
H.B. 584, To Committee on Intergovernmental Relations.
H.B. 838, To Committee on Natural Resources.
H.B. 848, To Committee on Natural Resources.
H.B. 870, To Committee on Economic Development.
H.B. 872, To Committee on Finance.
H.B. 910, To Committee on Natural Resources.
H.B. 959, To Committee on State Affairs.
H.B. 1021, To Committee on Jurisprudence.
H.B. 1047, To Committee on State Affairs.
H.B. 1061, To Committee on Economic Development.
H.B. 1101, To Committee on Natural Resources.
H.B. 1139, To Committee on Intergovernmental Relations.
H.B. 1183, To Committee on State Affairs.
H.B. 1202, To Committee on State Affairs.
H.B. 1208, To Committee on State Affairs.
H.B. 1346, To Committee on State Affairs.
H.B. 1419, To Committee on State Affairs.
H.B. 1420, To Committee on Economic Development.
H.B. 1540, To Committee on Natural Resources.

H.B. 1543, To Committee on Natural Resources.
H.B. 1582, To Committee on Natural Resources.
H.B. 1693, To Committee on Human Resources.
H.B. 1694, To Committee on Natural Resources.
H.B. 1727, To Committee on Economic Development.
H.B. 1733, To Committee on Natural Resources.
H.B. 1745, To Committee on Jurisprudence.
H.B. 1786, To Committee on Economic Development.
H.B. 1789, To Committee on Economic Development.
H.B. 1838, To Committee on Finance.
H.B. 1890, To Committee on Intergovernmental Relations.
H.B. 1915, To Committee on Economic Development.
H.B. 1934, To Committee on State Affairs.
H.B. 1935, To Committee on State Affairs.
H.B. 1941, To Committee on Economic Development.
H.B. 1953, To Committee on Economic Development.
H.B. 1954, To Committee on Economic Development.
H.B. 1956, To Committee on Economic Development.
H.B. 1958, To Committee on Economic Development.
H.B. 1969, To Committee on Economic Development.
H.B. 1983, To Committee on Economic Development.
H.B. 1999, To Committee on Human Resources.
H.B. 2004, To Committee on Natural Resources.
H.B. 2012, To Committee on Economic Development.
H.B. 2024, To Committee on Natural Resources.
H.B. 2038, To Committee on Intergovernmental Relations.
H.B. 2099, To Committee on Intergovernmental Relations.
H.B. 2115, To Committee on Economic Development.
H.B. 2123, To Committee on Economic Development.
H.B. 2124, To Committee on Economic Development.
H.B. 2125, To Committee on Economic Development.
H.B. 2130, To Committee on Economic Development.
H.B. 2229, To Committee on State Affairs.
H.B. 2298, To Committee on Education.
H.B. 2299, To Committee on Natural Resources.
H.B. 2305, To Committee on Intergovernmental Relations.
H.J.R. 33, To Committee on Finance.
H.J.R. 49, To Committee on State Affairs.

SENATE BILL 728 WITH HOUSE AMENDMENTS

Senator Santiesteban called **S.B. 728** from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Committee Amendment No. 1 - Staniswalis

Amend **S.B. 728**, page 4, line 3, by adding the following to Section 5.:

"The creation of the district is subject to the holding of a confirmation election held in accordance with the applicable provisions of Chapter 54 of the Water Code. There shall be but one confirmation election, to be held within twelve months from the effective date of this Act. If said election fails to secure the requisite approval of the district's voters, then this Act shall be null and void and of no effect."

Floor Amendment No. 1 - Vowell

Amend Section 6 of S.B. 728, page 4, lines 21-25, to read as follows:

"The directors above-named or their duly appointed and qualified successor or successors shall serve until the third [~~second~~] Saturday in January, 1981."

The amendments were read.

Senator Santiesteban moved to concur in the House amendments.

The motion prevailed.

SENATE BILL 425 WITH HOUSE AMENDMENT

Senator Santiesteban called S.B. 425 from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Floor Amendment No. 1 - Elizondo/Nowlin

Amend S.B. 425 by renumbering Section 4 as Section 6 and adding new Sections 4 and 5 to read as follows:

SECTION 4. Chapter 141, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 1118x, Vernon's Texas Civil Statutes), is amended by adding Section 6E to read as follows:

Sec. 6E. LOCAL GOVERNMENT APPROVAL COMMITTEE. The rates, fares, tolls, charges, rents, and other compensation established by an authority in a metropolitan area whose principal city has a population of less than 1,200,000, according to the most recent federal census, may not take effect until they are approved by a majority vote of a committee composed of:

(a) five members of the city council of the principal city who are chosen for this committee by the members of that body;

(b) three members of the commissioners court of the county that includes the largest portion of the incorporated area of the principal city, who are chosen for this committee by the members of that court; and

(c) three mayors of incorporated municipalities, except the principal city, located within the authority who are chosen for this committee jointly by the mayors of all incorporated municipalities, except the principal city, located within the authority.

SECTION 5. Section 4 of this Act applies to rates, fares, tolls, charges, rents, and other compensation established on or after the effective date of this Act.

The amendment was read.

Senator Santiesteban moved that the Senate do not concur in the House amendment, but that a Conference Committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on S.B. 425 before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Santiesteban, Chairman; Parker, Ogg, Uribe, Vale.

SENATE BILL 308 WITH HOUSE AMENDMENT

Senator Traeger called S.B. 308 from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Committee Amendment No. 1 - Maloney

Amend S.B. 308, Section 10, on line 25 by deleting subsection (a) in its entirety, and by deleting "(b)" on page 9, line 2.

The amendment was read.

Senator Traeger moved to concur in the House amendment.

The motion prevailed by the following vote: Yeas 27, Nays 0.

Absent-excused: Andujar, McKnight, Meier, Richards.

SENATE BILL 297 WITH HOUSE AMENDMENT

Senator Williams called S.B. 297 from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Floor Amendment No. 1 - Green

Amend S.B. 297 by adding a new (16) on page 2, line 11 to read as follows:

(16) persons commissioned as peace officers by a school district as authorized by Section 21.483, Texas Education Code.

The amendment was read.

Senator Williams moved to concur in the House amendment.

The motion prevailed by the following vote: Yeas 27, Nays 0.

Absent-excused: Andujar, McKnight, Meier, Richards.

SENATE BILL 749 WITH HOUSE AMENDMENT

Senator Parker called S.B. 749 from the President's table for consideration of the House amendment to the bill:

The President laid the bill and the House amendment before the Senate.

Committee Amendment No. 1 - Shaw

Amend S.B. 749 by Parker on page 1, line 7, by striking "year 1983" and substituting "years 1982 and 1983".

The amendment was read.

Senator Parker moved to concur in the House amendment.

The motion prevailed by the following vote: Yeas 27, Nays 0.

Absent-excused: Andujar, McKnight, Meier, Richards.

SENATE BILL 371 WITH HOUSE AMENDMENT

Senator Farabee called S.B. 371 from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Committee Amendment No. 1 - Davis

SUBSTITUTE THE FOLLOWING FOR S.B. 371:

A BILL TO BE ENTITLED AN ACT

amending the general provisions relating to the administration and collection of taxes.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Article 1.031, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as amended, is amended by adding Section (3) to read as follows:

(3) The Comptroller's authority to examine books, records and papers under this Chapter extends to all books, records, papers and other objects which the Comptroller determines are necessary for conducting a complete examination under this Title.

SECTION 2. Chapter 1, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as amended, is amended by adding Article 1.031A, to read as follows:

Art. 1.031A. Records

Notwithstanding the provisions of any other Article of this Title which requires a taxpayer to retain records for a certain length of time, any taxpayer who must keep records under this Title shall keep those records open to inspection by the Comptroller, the Attorney General, or the authorized representatives, of either of them for four (4) years; except that pistol dealers shall keep records for ten (10) years, as required by Section (7), Article 19.01 of this Title.

SECTION 3. Chapter 1, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as amended, is amended by adding Article 1.036 to read as follows:

Art. 1.036. SAMPLING IN AUDITING; PROJECTING ASSESSMENTS

(1) Pursuant to a written agreement with the taxpayer, or without such an agreement in cases coming within the provisions of Subsection 2(B) of this article, the comptroller or his designee may use sample and projection auditing

methods for determining tax liability when he determines that the sampling and projection will provide the most reasonable means of determining any tax imposed by this title. Should the taxpayer not agree in writing to a sample and projection audit method as provided by this section, any audit performed on the taxpayer shall be a detailed audit. The comptroller may use sample audit methods in preliminary testing to determine if an error exists without the written approval of the taxpayer but such sample may not be used as a basis for a tax liability without the written consent of the taxpayer.

(2) Sampling auditing methods are appropriate if:

(A) the taxpayer's records are so detailed, complex, or voluminous that an audit of all detailed records would be unreasonable or impractical;

(B) the taxpayer's records are inadequate or insufficient, so that a competent audit for the period in question is not otherwise possible; or

(C) the cost of an audit of all detailed records, to the taxpayer or to the State, will be unreasonable in relation to the benefits derived, and sampling procedures will produce a reasonable result.

(3) Before using a sample technique to establish a tax liability the comptroller or his designee will notify the taxpayer in writing of the sampling procedure to be used.

(4) The sample must reflect, as nearly as possible, the normal conditions under which the business was operated during the period to which the audit applies. If a taxpayer can demonstrate that a transaction in a sample period is not representative of the taxpayer's business operations, the transaction shall be eliminated from the sample and be separately assessed in the audit. If records are inadequate to reflect accurately the business operations of the taxpayer, the comptroller or his designee shall determine the best information available and base his audit report on that information.

(5) If the taxpayer demonstrates that any sampling method used by the comptroller was not in accordance with generally recognized sampling techniques, the audit will be dismissed as to that portion of the audit established by projection based upon the sampling method and a new audit may be performed.

SECTION 4. Chapter 1, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as amended, is amended by adding a Article 1.037 to read as follows:

Art. 1.037 GENERAL AUDIT AND PREHEARING POWERS

(1) In this article:

(A) "Person" includes an individual, corporation, partner, partnership, officer or director of a corporation, joint venture, trust, trustee, agent, or association.

(B) "Taxpayer" means the person whose tax obligation the comptroller is seeking to determine.

(2) (A) Before a determination of or a hearing on a taxpayer's tax obligation, if any, the comptroller may issue a subpoena addressed to the sheriff or constable of any county in this State to require any person, whom the comptroller determines may provide assistance in the examination of a taxpayer's tax obligation, to appear at the place and time stated in the subpoena for the taking of his oral deposition, before an official authorized to take depositions. The subpoena may require the person to produce at the time of the deposition, books, documents, records, papers, accounts and other objects as may be specified by the comptroller. The subpoena must include a statement setting out the reason why the requested material is needed.

(B) The deposition shall be taken in the county of the person's residence or in the county where the person is employed or regularly transacts business.

The subpoena shall specify that the person shall remain in attendance from day to day until the deposition is begun and completed.

(C) The officer taking the oral deposition may not sustain objections to any of the testimony taken or exclude any of it.

(D) When the testimony is fully transcribed, the deposition shall be submitted to the person for examination and read to or by the person, unless the examination and reading are waived in writing by the person and by the comptroller. However, if the person is represented by an attorney of record, the deposition officer shall notify the attorney of record in writing by registered mail or certified mail that the deposition is ready for examination and reading at the office of the deposition officer. If the person does not appear and examine, read, and sign the deposition within 10 days after the mailing of the notice, the deposition shall be returned and may be used as fully as though signed. The officer shall enter on the deposition any changes in form or substance that the person desires to make and a statement of the reasons given by the person for making them. The deposition shall then be signed by the person, unless the person and the comptroller by stipulation waive the signing or the person is ill, cannot be found, or refuses to sign. If the deposition is not signed by the person, the officer shall sign it and state on the record the fact of the waiver, illness, or absence of the person or the fact of the refusal to sign, together with the reason, if any given, for failure to sign. The deposition may then be used as fully as though signed.

(E) The deposition shall be returned to the comptroller by the official taking the deposition either by mail or by delivering it in person.

(3) Before a determination of or a hearing on a taxpayer's tax obligation, if any, the comptroller may:

(A) issue a subpoena addressed to the sheriff or constable of any county in this State to require any person, to produce at the place and time stated in the subpoena, books, documents, records, papers, accounts and other objects that the comptroller determines may assist in an examination of a person's tax obligation;

(B) issue an order to a person to permit entry upon designated land or other property in his possession or control for the purpose of inspecting, measuring, surveying, or photographing the property or any designated object or operation on the property that may be material to any matter involved in the examination. The order must specify the time, place, and manner of making the inspection, measurement, or survey and taking the copies and photographs and may prescribe any terms and conditions that are just;

(C) copy or conduct a complete examination of books, documents, records, papers, accounts and other objects that are produced as a result of the subpoenas or orders specified in this article; and

(D) serve or have served by his designated agent any subpoena or order issued under this article by delivering a copy of the subpoena to the person.

(4) A person, other than the taxpayer, who is subpoenaed to give a deposition or to produce books, records, papers, or other objects under the authority of this article is entitled to receive after presentation of a voucher sworn by the person and approved by the comptroller:

(A) mileage of 20 cents a mile, or a greater amount as prescribed by agency rule, for going to, and returning from the place of the hearing or the place where the deposition is taken, if the place is more than 25 miles from the person's place of residence; and

(B) a fee of \$20 a day, or a greater amount as prescribed by agency rule, for each day or part of a day the person is necessarily present as a deponent.

(5) If a person fails to comply with a subpoena or order issued under this article the comptroller may:

(A) acting through the attorney general, bring suit to enforce the subpoena or order in a district court of Travis County. The court, if it determines that good cause exists for the issuance of a subpoena or order, shall order the compliance with the requirements of the subpoena or order. Failure to obey the order of the court may be punishable by the court as contempt;

(B) use records, books, papers and other documents obtained or depositions taken under this article only in an administrative hearing of the comptroller or a judicial proceeding brought by or against the comptroller. The information may be made available to the federal government or to another state under an exchange agreement; and

(C) delegate his authority to issue subpoenas or orders and to participate in the taking of depositions as specified in this article to any attorney employed by him.

(6) If a foreign corporation doing business in this State has such contact with this State that it becomes subject to the taxes administered and collected by the comptroller and fails to appoint or maintain a registered agent in this State, or if the registered agent cannot with reasonable diligence be found at the registered office, then the secretary of state shall be an agent of the corporation and may be served with any subpoena or other order issued under this article in the manner provided for service of process in Article 8.10, Texas Business Corporation Act.

(7) Any person, including the taxpayer, shall be entitled to obtain, upon request, a copy of any statement he has previously made concerning the examination or its subject matter and which is in the possession, custody, or control of the comptroller. Copies of statements made to the comptroller by any person which are used as a basis for an assessment against a taxpayer may be obtained by the taxpayer upon request. If the request is refused, the person may move for an agency order under this subsection. For the purpose of this section, a statement previously made is:

(A) a written statement signed or otherwise adopted or approved by the person making it; or

(B) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

SECTION 5. Chapter 1, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as amended, is amended by adding a Article 1.038 to read as follows:

Art. 1.038 SPECIAL PROCEDURES FOR THIRD-PARTY ORDERS AND SUBPOENAS

(1)(A) If any order or subpoena described in Article 1.037 of this chapter is served on any person who is a third-party recordkeeper as defined in Subsection (1)(C) of this article, and the order or subpoena requires the production of any portion of records made or kept of the business transactions or affairs of any person (other than the person ordered or subpoenaed) who is identified in the description of the record contained in the order or subpoena, then notice of the order or subpoena shall be given to any person so identified within three days of the day on which the service on the third-party recordkeeper is made, but no later than the 14th day before the day fixed in the order or subpoena as the day upon which the records are to be examined. The notice shall be accompanied by a copy of the order or subpoena which has been served and shall contain directions for staying compliance with the order or subpoena under Subsection (2)(B) of this article.

(B) The notice shall be sufficient if, on or before the third day, the notice is delivered in hand to the person entitled to notice, or is mailed by certified or registered mail to the last mailing address of the person, or, in the absence of a last known address, is left with the person ordered or subpoenaed. If the notice is mailed, it shall be sufficient if mailed to the last known address of the person entitled to notice.

(C) For purposes of this article, the term "third-party recordkeeper" means:

(i) a mutual savings bank, cooperative bank, domestic building and loan association, or other savings institution chartered and supervised as a savings and loan or similar association under federal or state law, a bank as defined in 26 U.S.C. Section 581, or any credit union within the meaning of 26 U.S.C. Section 501(c)(14)(A);

(ii) any consumer reporting agency as defined under Section 602(d) of the Fair Credit Reporting Act, 15 U.S.C. 1681a(f);

(iii) any person extending credit through the use of credit cards or similar devices; and

(iv) any broker as defined in Section 3(a)(4) of the Securities Exchange Act of 1934, 15 U.S.C. Section 78c(a)(4).

(D) Subsection (1)(A) may not apply to an order or subpoena served on the person with respect to whose liability the order or subpoena is issued, or an officer or employee of the person; or any order or subpoena to determine whether or not records of the business transactions or affairs of an identified person have been made or kept; or any order or subpoena described in Section (5) of this article.

(E) An order or subpoena to which this subsection applies shall identify the taxpayer to whom the order or subpoena relates and to whom the records pertain and shall provide other information to enable the person ordered or subpoenaed to locate the records required under the order or subpoena.

(2)(A) Notwithstanding any other law or rule of law, a person who is entitled to notice of an order or subpoena under Section (1) of this article shall have the right to intervene in any proceeding with respect to the enforcement of the order or subpoena under Article 1.037(5).

(B) Notwithstanding any other law or rule of law, a person who is entitled to notice of an order or subpoena under Section (1) of this article shall have the right to stay compliance with the order or subpoena if, not later than the 14th day after the day the notice was given in the manner provided in Subsection (1)(B):

(i) notice in writing is given to the person ordered or subpoenaed not to comply with the order or subpoena;

(ii) a copy of the notice not to comply with the order or subpoena is mailed by registered or certified mail to the person and to the office the comptroller directs in the notice referred to in Subsection (1)(A) of this article; and

(iii) suit is filed against the comptroller in a district court of Travis County to stay compliance with the order or subpoena.

(3) No examination of any records required to be produced under an order or subpoena as to which notice is required under Section (1) may be made:

(A) before the expiration of the 14-day period allowed for the notice not to comply under Subsection (2)(B); or

(B) when the requirements of Subsection (2)(B) have been met, except in accordance with an order issued by a district court of Travis County authorizing examination of the records or with the consent of the person staying compliance.

(4) If any person takes any action as provided in Section (2) and such person is the person with respect to whose liability the order or subpoena is issued under Article 1.037 (or is the agent, nominee, or other person acting under the direction or control of such person), then the running of any period of limitations under Article 1.045 with respect to the person shall be suspended for the period during which a proceeding, and appeals of the proceeding, with respect to the enforcement of such order is pending.

(5) Any order or subpoena issued under Article 1.037 which does not identify the person with respect to whose liability the order is issued may be served only after a court proceeding in which the comptroller establishes that:

(A) the order relates to the investigation of a particular person or ascertainable group or class of persons;

(B) there is a reasonable basis for believing that the person or group or class of persons may fail or may have failed to comply with any provision of state law; and

(C) the information sought to be obtained from the examination of the records (and the identity of the person or persons with respect to whose liability the order is issued) is not readily available from other sources.

(6) In the case of an order or subpoena issued under Article 1.037, the provisions of Subsections (1)(A) and Section (2) of this article may not apply if, upon petition by the comptroller, the court determines, on the basis of the facts and circumstances alleged, that there is reasonable cause to believe the giving of notice may lead to attempts to conceal, destroy, or alter records relevant to the examination, to prevent the communication of information from other persons through intimidation, bribery or collusion or to flee to avoid prosecution, testifying or production of records.

(7)(A) A district court of Travis County shall have jurisdiction to hear and determine proceedings brought under Sections (5) or (6). The determinations required to be made under Sections (5) and (6) shall be ex parte and shall be made solely upon the petition and supporting affidavits. An order denying the petition shall be deemed a final order which may be appealed.

(B) Except for cases the court considers of greater importance, a proceeding brought for the enforcement of any order, or a proceeding under this section, and appeals, take precedence on the docket over all cases and shall be assigned for hearing and decided at the earliest practicable date.

(8) The comptroller shall by rule establish the rates and conditions for payments to reimburse reasonably necessary costs directly incurred by third-party recordkeepers in searching for, reproducing, or transporting books, papers, records, or other data required to be produced by order or subpoena upon request of the comptroller. The reimbursement shall be in addition to mileage and fees paid pursuant to Subsections (4)(A) and (B) of Article 1.037.

SECTION 6. Sections (A), (B), (C), and (E), Article 1.045, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, are amended to read as follows:

(A) Limitation. ~~The [Except where a shorter period of time is provided in this Title, the] Comptroller shall assess any tax imposed by this Title within four (4) [seven-(7)] years from the date such tax is due and payable, [and the Comptroller may bring an action in the courts of this State, or of any other state, or of the United States within seven (7) years from the date such tax is due and payable to collect the amount delinquent together with penalties and interest. No action may be commenced to collect taxes imposed by this Title after seven (7) years (or such other shorter period of time as may be provided in this Title) from the date such tax is due and payable,] provided that:~~

(1) In the case of a false or fraudulent return with intent to evade the tax;
or

(2) In the case of failure to file a return; or

(3) In the case of gross error in information reported in a return that would increase the amount of tax payable by twenty-five percent (25%) or more; the tax may be assessed ~~[and collected, or a proceeding in any court for the collection of such a tax may be begun without assessment,]~~ at any time.

(B) Action for Collection of Tax, Penalties, Interest; Limitation. At any time within three (3) years after a deficiency or jeopardy determination has become due and payable or within three (3) years after the last recording of a lien, the Comptroller may bring an action in the courts of this State, or any other State, or of the United States, in the name of the people of the State of Texas, to collect the amount delinquent together with penalties and interest. ~~[Period for Sales and Use Tax. For the purpose of the Limited Sales, Excise and Use Tax imposed by Chapter 20 of this Title, the period of time provided by this Article shall be four (4) years, and any provision of Chapter 20 to the contrary is hereby repealed to the extent of such conflict.]~~

(C) Agreement to Extend Period.

(1) Before the expiration of the period prescribed in this Article for the assessment and collection of any tax imposed by this Title, the Comptroller, or his representative, and a taxpayer may agree in writing to an assessment and collection after that time. The agreement must contain the reasons the Comptroller and the taxpayer wish to extend the period. At any time before the expiration of the period agreed on, the tax may be assessed and collected, or an action may be commenced in any court to collect the amount delinquent.

(2) The extended period agreed on under Subsection (1) of this Section may be extended by subsequent agreements made before the expiration of the extended period. All subsequent agreements must set forth the reasons for extending the period.

(3) No single extension agreement shall be for a period of more than 24 months from the expiration date of the period being extended.

(4) The period for assessment and collection of a tax may be extended if:

(a) without an extension, there might occur a revenue loss to the State;

(b) either the taxpayer or the Comptroller, despite good-faith efforts, require more time to prepare for or complete the audit;

(c) without an extension, circumstances beyond the control of either the Comptroller or the taxpayer would make an audit by the Comptroller impractical or burdensome for either party; or

(d) an issue of law involved in the audit is awaiting determination in either litigation or an administrative proceeding. ~~[If, before the expiration of the period of time prescribed in this Article for the assessment and collection of any tax imposed by this Title, or before the expiration of any shorter period of time as may be otherwise provided in this Title, the Comptroller, or his representative, and the taxpayer have consented in writing to an assessment after such time, the tax may be assessed and collected, and an action may be commenced in any court to collect the amount delinquent, at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.]~~

(E) Suspension of Time for Litigation or Redetermination.

(1) When, before the expiration of the period of time prescribed in this Article for the assessment and collection of any tax imposed by this Title, or before the expiration of any shorter period of time as may be otherwise provided for such assessment and collection by any Article of this Title, a tax

payment is made under protest, a judicial proceeding is pending in a court of competent jurisdiction to determine the amount of tax due, or an administrative proceeding is pending before the Comptroller for redetermination of tax liability, the period of time prescribed in this Article or otherwise provided by any Article of this Title shall be suspended with respect to the amount of the tax in issue in the protest, court proceeding or administrative proceeding, until such matters are finally determined, whereupon the running of said period of time shall resume until finally expired.

(2) A bankruptcy case commenced under Title 11 of the United States Code suspends the running of the period prescribed by any Article of this Title for the assessment or collection of any tax imposed by this Title until the bankruptcy case is dismissed or closed. After the case is dismissed or closed, the running of the period resumes until finally expired.

SECTION 7. Paragraph (i), Subsection (g), Section (1), Article 1.07, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as amended, is amended to read as follows:

(i) Any transfer of property or an interest in property within six (6) months immediately preceding the filing of the notice of liens provided for by this Article (a) by any person who is delinquent in the payment of any tax provided for by this Title; or (b) by any person who is insolvent at the time of such transfer and has received, collected or withheld money as a tax under the provisions of this Title; shall be deemed a preferential transfer and voidable by the Comptroller if such transfer ~~[(1)]~~ is with intent to defraud the State. ~~[and (2) is]~~ The transfer of the property or the interest in property without adequate and sufficient consideration creates a rebuttable presumption that the transfer was made with intent to defraud the State. A transfer with sufficient consideration creates a rebuttable presumption that the transfer was not made with intent to defraud the State. The Comptroller shall have the right to recover by suit brought by the Attorney General in Travis County, Texas, the property so transferred or the value of such property. This section is cumulative and in addition to any rights accruing to the Comptroller as a creditor under the general laws of this State.

SECTION 8. Section 322, Texas Probate Code, as amended, is amended to read as follows:

Sec. 322. CLASSIFICATION OF CLAIMS AGAINST ESTATES OF DECEDENT

Claims against an estate of a decedent shall be classed and have priority of payment, as follows:

Class 1. Funeral expenses and expenses of last sickness for a reasonable amount to be approved by the court, not to exceed Five Thousand Dollars, any excess to be classified and paid as other unsecured claims.

Class 2. Expenses of administration and expenses incurred in the preservation, safe-keeping, and management of the estate.

Class 3. Claims secured by mortgage or other liens, including tax liens, so far as the same can be paid out of the proceeds of the property subject to such mortgage or other lien, and when more than one mortgage or lien shall exist upon the same property, the oldest shall be first paid; but no preference shall be given to such mortgage or lien.

Class 4. Claims for taxes, penalties and interest due under Title 122A; Section 81.111, Natural Resources Code; the Local Sales and Use Tax Act, as amended (Article 1066c, Vernon's Texas Civil Statutes); Section 11B, Chapter 141, Acts of the 66th Legislature, Regular Session, 1973, as amended (Article 1118x, Vernon's Texas Civil Statutes); or Section 16, Chapter 683, Acts of the 66th Legislature, Regular Session, 1979 (Article 1118y, Vernon's Texas Civil Statutes).

Class 5. [4-] All other claims legally exhibited within six months after the original grant of letters testamentary or of administration.

Class 6. [5-] All claims legally exhibited after the lapse of six months from the original grant of letters testamentary or of administration.

SECTION 9. Section 294(a), Texas Probate Code, is amended to read as follows:

(a) Giving of Notice Required. Within one month after receiving letters, personal representatives of estates shall send to the comptroller of public accounts by certified or registered mail if the decedent remitted or should have remitted taxes administered by the comptroller of public accounts and publish in some newspaper, printed in the county where the letters were issued, if there be one, a notice requiring all persons having claims against the estate being administered to present the same within the time prescribed by law. The notice shall state the time of issuance of letters held by the representative, together with his residence and post office address.

SECTION 10. The amendment by this Act in narrowing the period of limitations for collection of tax does not apply to the estates of persons who died prior to the effective date of this Act.

SECTION 11. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, except as provided in Section 10 and it is so enacted.

The amendment was read.

Senator Farabee moved to concur in the House amendment.

The motion prevailed.

HOUSE BILL 634 REREFERRED

On motion of Senator Mauzy and by unanimous consent, H.B. 634 was withdrawn from the Committee on Intergovernmental Relations and rereferred to the Committee on State Affairs.

BILLS AND RESOLUTIONS SIGNED

The President announced the signing in the presence of the Senate, after the caption had been read, the following enrolled bills and resolutions:

S.B. 11	S.B. 392 (Signed subject to Sec. 49a, Art. III, Constitution of State of Texas)
S.B. 15	S.B. 429
S.B. 183	S.B. 482
S.B. 193	S.B. 490
S.B. 290	S.B. 655
S.B. 293	S.B. 726
S.B. 373	S.B. 771
S.C.R. 37	S.C.R. 92
H.B. 267	H.B. 1663
H.B. 965	H.B. 364

H.C.R. 82	H.C.R. 118
H.C.R. 83	H.C.R. 122
H.C.R. 105	H.C.R. 153
H.C.R. 110	

SENATE BILL 354 ON SECOND READING

On motion of Senator Mauzy and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

S.B. 354, Relating to workers' compensation medical reports.

The bill was read second time and was passed to engrossment.

SENATE BILL 354 ON THIRD READING

Senator Mauzy moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **S.B. 354** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 27, Nays 0.

Absent-excused: Andujar, McKnight, Meier, Richards.

The bill was read third time and was passed by the following vote: Yeas 26, Nays 1.

Yeas: Blake, Brooks, Brown, Caperton, Doggett, Farabee, Glasgow, Harris, Howard, Jones, Kothmann, Leedom, Mauzy, Mengden, Ogg, Parker, Santiesteban, Sarpalius, Short, Snelson, Traeger, Travis, Truan, Uribe, Vale, Williams.

Nays: Wilson.

Absent-excused: Andujar, McKnight, Meier, Richards.

SENATE BILL 892 ON SECOND READING

On motion of Senator Brooks and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

S.B. 892, Relating to the Southwest Collegiate Institute for the Deaf.

The bill was read second time and was passed to engrossment.

SENATE BILL 892 ON THIRD READING

Senator Brooks moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **S.B. 892** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 27, Nays 0.

Absent-excused: Andujar, McKnight, Meier, Richards.

The bill was read third time and was passed by the following vote: Yeas 27, Nays 0.

Absent-excused: Andujar, McKnight, Meier, Richards.

NOTICE OF CONSIDERATION OF NOMINATIONS

Senator Brooks, Acting Chairman, Subcommittee on Nominations, gave notice that he would, at the conclusion of Morning Call on Monday, April 27, 1981, submit to the Senate for consideration nominations to agencies, boards and commissions of the State.

SENATE BILL 913 ON SECOND READING

On motion of Senator Harris and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

S.B. 913, Prescribing requirements for the computation of reserves for life insurance policies and annuity and pure endowment contracts, and prescribing requirements for the computation of nonforfeiture benefits and cash surrender values for life insurance policies; amending the Insurance Code, as amended, by amending Article 3.28, the Standard Valuation Law, and Article 3.44a, the Standard Non-Forfeiture Law.

The bill was read second time.

Senator Harris offered the following committee amendment to the bill:

Amend **S.B. 913** on page 14 by deleting lines 2 and 3 and substituting in lieu thereof the following language:

“(1) Except as provided in Subsection (c) of this Section, the reference interest rate referred to in Subsection (b) of this Section shall be defined as follows:”

The committee amendment was read and was adopted.

Senator Harris offered the following committee amendment to the bill:

Amend **S.B. 913** on page 15 by deleting lines 16 through 26 and substituting in lieu thereof the following language:

“(e) State Board of Insurance Promulgation of Definitions of Reference Interest Rate

The State Board of Insurance shall, not less than annually, determine whether the definition of reference interest rates as specified in Subsection (d) of this Section continues to be a reasonably accurate approximation of the average yield achieved from purchases in the United States in publicly quoted markets of investment grade fixed term and fixed interest corporate obligations for the times specified in such Subsection and shall, if it determines that such definition is no longer such reasonably accurate approximation, promulgate rules in the manner specified in the Administrative Procedure and Texas Register Act to adopt such alternative methods as are appropriate to achieve such purpose.”

The committee amendment was read and was adopted.

On motion of Senator Harris and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to engrossment.

SENATE BILL 913 ON THIRD READING

Senator Harris moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **S.B. 913** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 27, Nays 0.

Absent-excused: Andujar, McKnight, Meier, Richards.

The bill was read third time and was passed by the following vote: Yeas 27, Nays 0.

Absent-excused: Andujar, McKnight, Meier, Richards.

GUESTS PRESENTED

Senator Travis was recognized and presented to the Members his parents, D. T. and Nell Travis of Abilene.

Mr. and Mrs. Travis were welcomed as guests of the Senate for today.

COMMITTEE SUBSTITUTE SENATE BILL 606 ON SECOND READING

Senator Snelson asked unanimous consent to suspend the regular order of business to take up for consideration at this time:

C.S.S.B. 606, Relating to regulation of professional counselors; providing a penalty.

There was objection.

Senator Snelson then moved to suspend the regular order of business and take up **C.S.S.B. 606** for consideration at this time.

The motion prevailed by the following vote: Yeas 25, Nays 2.

Yeas: Blake, Brooks, Brown, Caperton, Doggett, Farabee, Glasgow, Harris, Jones, Kothmann, Leedom, Mauzy, Mengden, Ogg, Parker, Santiesteban, Sarpalius, Short, Snelson, Traeger, Travis, Truan, Uribe, Vale, Williams.

Nays: Howard, Wilson.

Absent-excused: Andujar, McKnight, Meier, Richards.

The bill was read second time and was passed to engrossment.

COMMITTEE SUBSTITUTE SENATE BILL 606 ON THIRD READING

Senator Snelson moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **C.S.S.B. 606** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 25, Nays 2. (Same as previous roll call)

The bill was read third time and was passed.

RECORD OF VOTES

Senators Wilson and Howard asked to be recorded as voting "Nay" on the final passage of the bill.

COMMITTEE SUBSTITUTE SENATE BILL 550 ON SECOND READING

On motion of Senator Ogg and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

C.S.S.B. 550, Relating to licensing and regulation of certain pilots, pilotage rates, and pilot services.

The bill was read second time and was passed to engrossment.

COMMITTEE SUBSTITUTE SENATE BILL 550 ON THIRD READING

Senator Ogg moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **C.S.S.B. 550** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 27, Nays 0.

Absent-excused: Andujar, McKnight, Meier, Richards.

The bill was read third time and was passed.

(President Pro Tempore Traeger in Chair)

COMMITTEE SUBSTITUTE SENATE BILL 105 ON SECOND READING

On motion of Senator Farabee and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

C.S.S.B. 105, Relating to the establishment of the parent-child relationship and to determination, payment, collection, and enforcement of child support.

The bill was read second time.

Senator Glasgow offered the following amendment to the bill:

Amend **C.S.S.B. 105** by striking Sec. 14.12(a)(5) in SECTION 1 of the bill.

The amendment was read and was adopted.

Senator Wilson offered the following amendment to the bill:

Amend C.S.S.B. 105 by striking Section 2 in its entirety and substituting the following:

SECTION 2. Section 13.01, Family Code, is repealed.

The amendment was read and was adopted by the following vote: Yeas 15, Nays 12.

Yeas: Blake, Brooks, Brown, Harris, Howard, Kothmann, Mengden, Sarpalius, Short, Travis, Truan, Uribe, Vale, Williams, Wilson.

Nays: Caperton, Doggett, Farabee, Glasgow, Jones, Leedom, Mauzy, Ogg, Parker, Santiesteban, Snelson, Traeger.

Absent-excused: Andujar, McKnight, Meier, Richards.

On motion of Senator Farabee and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

(President in Chair)

The bill as amended was passed to engrossment.

COMMITTEE SUBSTITUTE SENATE BILL 105 ON THIRD READING

Senator Farabee moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that C.S.S.B. 105 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 27, Nays 0.

Absent-excused: Andujar, McKnight, Meier, Richards.

The bill was read third time and was passed.

MOTION TO PLACE COMMITTEE SUBSTITUTE SENATE BILL 199 ON SECOND READING

Senator Vale asked unanimous consent to suspend the regular order of business to take up for consideration at this time:

C.S.S.B. 199, Relating to an appeal from an order of the Texas Alcoholic Beverage Commission or its administrator refusing, cancelling, or suspending a private club registration permit; amending Section 32.18, Alcoholic Beverage Code.

There was objection.

Senator Vale then moved to suspend the regular order of business and take up C.S.S.B. 199 for consideration at this time.

The motion was lost by the following vote: Yeas 17, Nays 10. (Not receiving two-thirds vote of Members present)

Yeas: Brooks, Brown, Caperton, Doggett, Glasgow, Kothmann, Mauzy, Ogg, Parker, Santiesteban, Short, Snelson, Traeger, Truan, Uribe, Vale, Wilson.

Nays: Blake, Farabee, Harris, Howard, Jones, Leedom, Mengden, Sarpalius, Travis, Williams.

Absent-excused: Andujar, McKnight, Meier, Richards.

MESSAGE FROM THE HOUSE

House Chamber
April 22, 1981

HONORABLE W. P. HOBBY
PRESIDENT OF THE SENATE

Sir: I am directed by the House to inform the Senate that the House has passed the following:

H.B. 778, Creating the constitutional office of criminal district attorney of Jackson County and abolishing the office of County Attorney.

Respectfully,

BETTY MURRAY, Chief Clerk
House of Representatives

COMMITTEE SUBSTITUTE SENATE BILL 460 ON SECOND READING

Senator Parker moved to suspend the regular order of business to take up for consideration at this time:

C.S.S.B. 460, Relating to release of a criminal defendant from detention and dismissal of a criminal action because of delay in prosecuting the criminal action.

The motion prevailed by the following vote: Yeas 21, Nays 5.

Yeas: Brooks, Doggett, Farabee, Harris, Howard, Kothmann, Leedom, Mauzy, Mengden, Ogg, Parker, Santiesteban, Sarpalius, Short, Traeger, Travis, Truan, Uribe, Vale, Williams, Wilson.

Nays: Blake, Caperton, Glasgow, Jones, Snelson.

Absent: Brown.

Absent-excused: Andujar, McKnight, Meier, Richards.

The bill was read second time.

Senator Parker offered the following amendment to the bill:

Amend C.S.S.B. 460 by striking all below the enacting clause and substitute the following in lieu thereof:

SECTION 1. Article 32A.01, Code of Criminal Procedure, 1965, as amended, is amended to read as follows:

Article 32A.01. Trial Priorities

Insofar as is practicable, the trial of a criminal action shall be given preference over trials of civil cases. ~~[—and the]~~ The trial of a criminal action against a defendant who is detained in custody ~~[jail]~~ or who has filed a motion requesting trial pursuant to Article 32A.02 of this Code shall be given preference over trials of other criminal actions.

SECTION 2. Article 32A.0s, Code of Criminal Procedure, 1965, as amended, is amended to read as follows:

Art. 32A.02. TIME LIMITATIONS

Sec. 1. A court shall grant a motion to set aside an indictment information, or complaint if the state is not ready for trial and ~~[within]~~:

(1) the defendant has been detained in custody for 120 days to answer for the same offense or any other offense arising out of the same transaction, excluding time during which:

(A) the defendant is also being detained pending trial for another offense, not arising out of the same transaction, as to which the period stated in this section has not elapsed; or

(B) the defendant is serving a sentence of imprisonment for another offense; or

(2) 120 days have elapsed since the defendant filed a motion requesting trial within that period of time. [120 days of the commencement of a criminal action if the defendant is accused of a felony;

~~{(2) 90 days of the commencement of a criminal action if the defendant is accused of a misdemeanor punishable by a sentence of imprisonment for more than 180 days; or~~

~~{(3) 60 days of the commencement of a criminal action if the defendant is accused of a misdemeanor punishable by a sentence of imprisonment for 180 days or less or punishable by only.~~

~~[Sec. 2. (a) Except as provided in Subsections (b) and (c) of this section, a criminal action commences for purposes of this article when an indictment, information, or complaint against the defendant is filed in court, unless prior to the filing the defendant is either detained in custody or released on bail or personal bond to answer for the same offense or any other offense arising out of the same transaction, in which event the criminal action commences when he is arrested.~~

~~[(b) If a defendant is to be retried following a mistrial, an order granting a new trial, or an appeal or collateral attack, a criminal action commences for purposes of this article on the date of the mistrial, the order granting a new trial, or the remand.~~

~~[(c) If an indictment, information, or complaint is dismissed on motion of the defendant, a criminal action commences for the purposes of the article when a new indictment, information, or complaint against the defendant is filed in court, unless the defendant is either detained in custody or released on bail or personal bond to answer the same offense or any other offense arising out of the same transaction, in which event the criminal action commences when he is detained or released.]~~

Sec. 2 [3]. The failure of a defendant to move for discharge under the provisions of this article prior to trial or the entry of a plea of guilty constitutes a waiver of the rights accorded by this article.

Sec. 3 [4]. In computing the time by which the state must be ready for trial, the following periods of delay shall be excluded:

(1) a reasonable period of delay resulting from other proceedings involving the defendant, including but not limited to proceedings for the determination of competence to stand trial, hearing on pretrial motions, appeals, and trials of other charges;

(2) any period during which the defendant is incompetent to stand trial;

(3) a period of delay resulting from a continuance granted at the request or with the consent of the defendant or his counsel, except that a defendant without counsel is deemed not to have consented to a continuance unless the court advised him of his right to a speedy trial and of the effect of his consent;

(4) a period of delay resulting from the absence of the defendant because his location is unknown and:

(A) he is attempting to avoid apprehension or prosecution; or

(B) the state has been unable to determine his location by due diligence;

(5) a period of delay resulting from the unavailability of the defendant whose location is known to the state but whose presence cannot be obtained by due diligence or because he resists being returned to the state for trial;

(6) a reasonable period of delay resulting from a continuance granted at the request of the state if the continuance is granted:

(A) because of the unavailability of evidence that is material to the state's case, if the state has exercised due diligence to obtain the evidence and there are reasonable grounds to believe the evidence will be available within a reasonable time; or

(B) to allow the state additional time to prepare its case and the additional time is justified because of the exceptional circumstances of the case;

(7) if the charge is dismissed upon motion of the state or the charge is disposed of by a final judgement and the defendant is later charged with the same offense or another offense arising out of the same transaction, the period of delay from the date of dismissal or the date of the final judgement to the date the time limitation would commence running on the subsequent charge had there been no previous charge;

(8) a reasonable period of delay when the defendant is joined for trial with a codefendant as to whom the time for trial has not run, if there is good cause for not granting a severance;

(9) a period of delay resulting from detention of the defendant in another jurisdiction, if the state is aware of the detention and exercises due diligence to obtain his presence for trial; and

(10) any other reasonable period of delay that is justified by exceptional circumstances.

SECTION 3. Article 17.151, Code of Criminal Procedure, 1965, as added is repealed.

SECTION 4. The change in law made by this Act applies to a criminal action if the action was instituted by the filing of an indictment, information, or complaint on or after the effective date of this Act. If the action was instituted before the effective date, the action is governed by the law amended by this Act as it was in effect before the effective date of this Act, and that law is continued in effect for this purpose as if this Act were not in force.

SECTION 5. This Act takes effect September 1, 1981.

SECTION 6. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read.

On motion of Senator Parker and by unanimous consent, the amendment was withdrawn.

Senator Parker offered the following amendment to the bill:

Amend C.S.S.B. 460 by striking all below the enacting clause and substituting the following in lieu thereof:

SECTION 1. Article 32A.01, Code of Criminal Procedure, 1965, is amended to read as follows:

Article 32A.~~01-~~ Trial Priorities and Discharge for Delay.

(1) Insofar as is practicable, the trial of a criminal action shall be given preference over trials of civil cases. ~~[, and the]~~ The trial of a criminal action against a defendant who is detained in custody ~~[jail]~~ or who has filed a motion requesting trial shall be given preference over trials of other criminal actions.

(2) A court shall grant a motion to set aside an indictment, information, or complaint if the trial has not commenced within a reasonable time after:

(a) the defendant was taken into custody, if the defendant has been continuously detained in custody, to answer for the same offenses or any other offense arising out of the same transaction; or

(b) the defendant filed a motion requesting trial.

SECTION 2. Articles 17.151 and 32A.02, Code of Criminal Procedure, 1965, are repealed.

SECTION 3. The change in law made by this Act applies to a criminal action if the action was instituted by the filing of an indictment, information, or complaint on or after the effective date of this Act. If the action was instituted before the effective date, the action is governed by the law amended by this Act as it was in effect before the effective date of this Act, and that law is continued in effect for this purpose as if this Act were not in force.

SECTION 4. This Act takes effect September 1, 1981.

SECTION 5. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read and was adopted.

On motion of Senator Parker and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to engrossment.

COMMITTEE SUBSTITUTE SENATE BILL 460 ON THIRD READING

Senator Parker moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that C.S.S.B. 460 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 22, Nays 3.

Yeas: Brooks, Doggett, Farabee, Glasgow, Howard, Jones, Kothmann, Leedom, Mauzy, Mengden, Ogg, Parker, Santiesteban, Sarpalius, Short, Traeger, Travis, Truan, Uribe, Vale, Williams, Wilson.

Nays: Blake, Caperton, Snelson.

Absent: Brown, Harris.

Absent-excused: Andujar, McKnight, Meier, Richards.

The bill was read third time and was passed.

RECORD OF VOTES

Senators Snelson, Blake and Glasgow asked to be recorded as voting "Nay" on the final passage of the bill.

COMMITTEE SUBSTITUTE SENATE BILL 476 ON SECOND READING

Senator Truan asked unanimous consent to suspend the regular order of business to take up for consideration at this time:

C.S.S.B. 476, Relating to the regulation of circuses, carnivals, and zoos; providing a penalty.

There was objection.

Senator Truan then moved to suspend the regular order of business and take up **C.S.S.B. 476** for consideration at this time.

The motion prevailed by the following vote: Yeas 21, Nays 5.

Yeas: Brooks, Brown, Doggett, Farabee, Jones, Kothmann, Leedom, Mauzy, Mengden, Ogg, Parker, Santiesteban, Sarpalius, Short, Snelson, Traeger, Truan, Uribe, Vale, Williams, Wilson.

Nays: Blake, Caperton, Glasgow, Howard, Travis.

Absent: Harris.

Absent-excused: Andujar, McKnight, Meier, Richards.

The bill was read second time and was passed to engrossment.

COMMITTEE SUBSTITUTE SENATE BILL 476 ON THIRD READING

Senator Truan moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **C.S.S.B. 476** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 25, Nays 1.

Yeas: Brooks, Brown, Caperton, Doggett, Farabee, Glasgow, Howard, Jones, Kothmann, Leedom, Mauzy, Mengden, Ogg, Parker, Santiesteban, Sarpalius, Short, Snelson, Traeger, Travis, Truan, Uribe, Vale, Williams, Wilson.

Nays: Blake.

Absent: Harris.

Absent-excused: Andujar, McKnight, Meier, Richards.

The bill was read third time and was passed.

RECORD OF VOTES

Senators Blake, Howard and Travis asked to be recorded as voting "Nay" on the final passage of the bill.

WELCOME AND CONGRATULATORY RESOLUTIONS

S.R. 528 - By Williams: Extending welcome to Regina Lee Harrelson, "Honorary Page" for the day.

S.R. 529 - By Wilson: Extending congratulations to Rogers, Texas, on the occasion of its 100th anniversary.

S.R. 530 - By Wilson: Extending congratulations to Dr. Ralph Wilson, Jr., on the 25th anniversary of his company.

S.R. 531 - By Doggett: Extending congratulations to C. Robert Heath on his birthday.

S.R. 532 - By Wilson: Recognizing May 1st as Law Day 1981, and April 27th to May 3rd as Law Week 1981.

S.R. 533 - By Wilson: Extending welcome to James Claude Simmang, "Honorary Page" for the day.

S.R. 534 - By Wilson: Extending welcome to Michael John Simmang, Jr., "Honorary Page" for the day.

S.R. 535 - By Wilson: Extending welcome to Peter Kemper Simmang, "Honorary Page" for the day.

S.R. 536 - By Wilson: Extending welcome to Mary Elizabeth Collier, "Honorary Page" for the day.

S.R. 537 - By Wilson: Extending welcome to Jason Hall, "Honorary Page" for the day.

S.R. 538 - By Wilson: Extending welcome to Suzy Hall, "Honorary Page" for the day.

S.R. 539 - By Wilson: Extending welcome to Joey Hall, "Honorary Page" for the day.

S.R. 540 - By Doggett: Extending welcome to Father Leopoldo Reyes.

S.R. 541 - By Glasgow: Extending welcome to D. A. Gloff, M.D., "Capitol Physician" for the day.